IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

MFA.No. 553 of 2002(B)

MVOP.180/1998 of SPL.COURT FOR EC ACT CASES &MACT,TSR

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APPELLANT: 1ST RESPONDENT

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1. M.S.GOPALAN,
   MAMBILLY HOUSE, MANALOOR P.O.,
   THRISSUR.

1. M.S.GOPALAN,MAMBILY HOUSE,
   MANALOOR P.O.,THRISSUR.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS: CLAIMANT, 2ND RESPONDENT

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1. AZEEZ, S/O.VELIYAKATH KUNJIMON,
   VATANAPPILLY, THRISSUR.

1. AZEEZ S/O.VALIYAKATH KUNJIMON,
   VATANAPPILY,THRISSUR.

2. NEW INDIA ASSURANCE CO.LTD.,
   BRANCH NATTIKA, THRISSUR.

2. NEW INDIA ASSURANCE CO.LTD.,
   BRANCH NATTIKA,THRISSUR

BY ADV. SRI.M.RAJAGOPALAN
SRI.RAJIT

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No. 553 OF 2002

Dated this the 12th day of March, 2007

J U D G M E N T

The owner-cum-driver of a goods autorickshaw is the appellant. The 1st respondent filed a petition claiming compensation against the petitioner and insurer. It was alleged that while the 1st respondent was standing near the K.C.Ice Factory, Thrithallur, the petitioner drove goods autorickshaw to the reverse direction. It hit against the 1st respondent and he sustained injuries. The appellant remained ex parte. The contention of the insurer was that appellant was not having valid licence and badge at the time of accident. The Tribunal found that the 1st respondent is entitled to get compensation and awarded an amount of Rs. 77,500/- as compensation and directed the insurer to pay the amount and recover the same with interest from the appellant. When the insurer initiated steps to recover the amount after paying the same, this appeal is filed with delay petition. The delay was condoned and appeal was admitted. The learned counsel appearing for the appellant has argued that the appellant may be given an opportunity to

contest the case on merits. It is submitted that he did not receive any notice from the Tribunal. It is also contended that the accident took place inside the factory compound and for driving a vehicle inside the factory, no badge or licence is necessary and as such the Tribunal went wrong in giving liberty to the insurer to recover the amount from him. Considering the fact that the appellant did not get an opportunity to contest the matte, it is only just and proper that the appellant be given a reasonable opportunity to establish that the vehicle was covered with a valid policy of insurance. For that purpose, the case has to go back.

2. In the result, M.F.A is allowed in part. The finding that insurer can recover the amount from the appellant is set aside and the matter is remanded to the Tribunal to consider the question whether the contention of the appellant that insurer is liable to pay the compensation. The parties shall appear before the Tribunal on 12.4.2007.

K.PADMANABHAN NAIR,
JUDGE

ma

KURIAN JOSEPH, J.

O.P.No.16566/1997

J U D G M E N T

7.12.2006